82-1393

NO.____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ROBERT R. KAUFMAN,

Petitioner,

-vs.-

DEPARTMENTAL DISCIPLINARY COMMITTEE FOR THE FIRST JUDICIAL DEPARTMENT,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION, FIRST DEPATMENT, OF THE SUPREME COURT OF THE STATE OF NEW YORK

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QUESTIONS PRESENTED

1. Does a threatening and coercive taking of evidence and data in an Appellate Division investigation constitute an illegal search and search and seizure in violation of the Fourth (4th) Amendment of the Constitution of the United States?

2. Does the 14th Amendment (Fourteenth) prohibit the use of and admission in evidence on trial of statements and data obtained from Petitioner under compulsion—threats and coercion, which compels him to make statements and turn over all papers and data or be disbarred?

3. Is it repugnant to constitutional guarantees of due process for an Appellate Court to order an investigation of alleged violations; refer the results of said investigation for prosecution to itself; and then, as the tribunal of last resort, sit in judgment and review the application of convicted defendant who was the subject of the original court initiated investigation?

4. Is it repugnant to constitutional guarantees of due process and a fair trial for the prosecutor to SUPPRESS EXCULPATORY evidence and for the Court to deny production thereof where they previously denied a challenge to use of the evidence so seized?

5. Did the absence of Notice of the Charge of Fraud, of which petitioner was convicted, deprive petitioner of procedural due process?

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No.

In the
SUPREME COURT OF THE UNITED STATES
FEBRUARY TERM, 1983

ROBERT R. KAUFMAN,

Petitioner,

v.

DEPARTMENTAL DISCIPLINARY COMMITTEE FOR THE FIRST JUDICIAL DEPARTMENT,

Respondent.

Petitioner prays that a writ of certiorari issue to review the orders of the Appellate Division, First Department of the Supreme Court, entered on February 3, 1966, March 16, 1982, and June 24, 1982 in the above entitled case.

OPINION BELOW

The opinion of the court below with respect to the order of February 3, 1966, is reported at 25 A.D. 2d 48, 266 N.Y.S. 2d 958. No opinions were written in connection with the other orders.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (3). An order of disbarment was entered by the Appellate Division on February 3, 1966. On March 16, 1982 the Appellate Division entered an order denying an application to vacate the disbarment order as being the result of an illegal search and seizure and for other relief and quashing the subpoena served to produce the exculpatory evidence withheld by respondent, and on June 24, 1982, the Appellate Division entered an order denying petitioner's application for reargument. On October 21, 1982 the New York State Court of Appeals dismissed the appeals from the above orders. On January 13, 1983 Justice Marshal signed an order extending petitioner's time to file a petition for a writ of certiorari to and including February 21, 1983.

CONSTITUTIONAL PROVISIONS

UNITED STATES CONSTITUTION: AMENDMENT IV

The right of the people to be secure in their persons, houses, papers and effects as against unreasonable searches and seizures, shall not be violated, * * *

UNITED STATES CONSTITUTION: AMENDMENT V

No person * * nor shall be compelled in any criminal case to be a witness against himself * * *

UNITED STATES CONSTITUTION: AMENDMENT XIV

Section 1 * * * nor shall any State deprive any person of life, liberty, or property, without due process of law, * * *

STATEMENT OF CASE

Petitioner was admitted to practice as an attorney and counsellor at law in the State of New York on February 2, 1938. Disciplinary proceedings were instituted on June 12, 1962 by the filing of a petition containing charges of professional misconduct. A supplemental petition containing additional charges was filed November 17, 1964 after the association obtained petitioner's additional records and data by sending him the threatening and coercive letter exhibit, threatening to take action and charging him if he did not turn over his data and records. The letter, Exhibit 1, dated August 14, 1964 was complied with. A hearing on the charges was held before a referee who rendered his report dated September 24, 1965 sustaining six of the nine charges filed against petitioner. On February 3, 1966 the same Appellate Division confirmed the report of the Referee and ordered the petitioner disbarred from practice as an attorney and counsellor at law in the State of New York effective February 3, 1966. After subsequent proceedings in the Court of Appeals and the same Appellate Division in which petitioner unsuccessfully sought reconsideration of the disbarment order, petitioner moved on January 12, 1982 for reopening of the disbarment proceedings and suppression of the evidence on the

ground that the order was upon an illegal search and he had been coerced into providing the committee on grievances of the Bar Association with incriminating evidence in violation of the Fifth Amendment privilege against self incrimination and there was a suppression of exculpatory evidence by the prosecution.

On March 16, 1982 the same Appellate Division denied petitioner's motion and on June 24, 1982 denied reargument. The Court of Appeals dismissed the petitioner's appeals taken as of right by order Dated October 21, 1982. Petitioner claimed that the use in this disciplinary proceeding of incriminating testimony obtained by coercion and threats violated his rights under the Fifth Amendment as incorporated in the Fourteenth Amendment and constituted an illegal search and seizure under the Fourth Amendment of the U.S. Constitution. Petitioner's petition in the Appellate Division for recall and reconsideration of the disbarment order of February 3, 1966, claimed that his constitutional right to due process of law guaranteed by the Fourteenth Amendment was violated by the finding of the Referee that he had made certain fraudulent assignments although the charges in the disciplinary proceedings included NO SUCH SPECIFICATION or charges.

The finding with respect to fraudulent assignments occurred in connection with Charge No. 8 in the Supplemental petition filed by the Bar Association. This charge contained no allegations or charges of fraud.

In connection with this finding with respect to this charge the referee made the further finding that in an effort to hold off the clients, petitioner made assignments to them of obligations owing to petitioner. Exhibit 2 dated May 1969, N.Y. City paid petitioner $5,000.00 on this assignment. The Referee devoted several pages of his report to a discussion of these assignments (Referee's report, pages 3-34), characterized the assignments as "worthless" (Id. at 32) and "fraudulent" (Id. at 34), and found as a result of the assignment, that petitioner engaged in a "course of misconduct" and "acted in a fraudulent manner" (Id. at 34). Charge No. 8 in connection with which the referee made these findings and conclusions contained no allegations with respect to fraudulent assignments or improper conduct in relation thereto. The opinion of the appellate division on the confirmation of the referee's report upheld his finding with respect to Charge No. 8 without comment on the finding with respect to fraudulent assignments.

It is important to note that the exhibit order of Judge Frederick Backer, Supreme Court New York County, dated May 1969 awarded $4,969.24 on the claim of petitioner he had against the City of New York, this assignment that the referee called worthless, fraudulent, and all the other epithets used by the referee. It is likewise important to note the client stated Kaufman was still his and his son's attorney and that he, the client, owed him over $3,000.00 on matters he was still handling for them. In his testimony the client stated he authorized the petitioner to use the balance of the paid fund, page 1207 of the record. The whole settlement fund was a little over $5,000.00

REASONS FOR GRANTING THE WRIT

I

Respondent's coercive demands and threats, in the course of its investigation of petitioner's fitness to continue as a member of the bar, that petitioner furnish documents and information pertinent to possible disciplinary charges confronted petitioner with the alternative of providing his accuser with inculpatory evidence with respect to possible disbarment or being disbarred for his refusal to do so. Our adversary system of Justice safeguarded by the Constitution prohibits placing a person in such a dilemma. Punishment cannot be imposed for refusal to furnish incriminating information in reliance upon the privilege. *Spevack v. Klein*, 385 U.S. 511; *Griffin v. California*, 380 U.S. 609. Although at the time of this coercive demand *Cohen v. Hurley* 366 U.S. 117 was controlling. Here as a result of the coercive demand the prosecution received files and data and used the information and papers and data to charge and convict petitioner in violation of this Court's holdings in *Garrity v. New Jersey*, 385 U.S. 493; *Ullman v. United States*, 350 U.S. 422. Since evidence so coerced under threat of punishment for refusal to supply it was used over objection which petitioner registered within 30 days after February 13, 1967. *Spevack v. Klein*, 16 N.Y.2, 1048, *Kaye v. Coordinating Committee*, 386 U.S. 17 and *Zuckerman v. Greason*, 386 U.S. 15 had not been decided until February 13, 1967. The refusal to suppress the same violated petitioner's rights under the Fifth and Fourteenth Amendments and constituted an illegal search and seizure under the Fourth Amend-

ment. (1) This Court has held civil forfeitures to be within the protection of the self incriminating privilege and (2) holding disbarment and other disqualifications from employment to be the equivalent of criminal punishment in the context of other constitutional protections.

II

The rejection by the Court below of petitioner's claim of privilege with respect to the penalty of disbarment is at odds with the decisions by this Court holding Civil Forfeitures within the protection of the privilege. *Boyd v. United States,* 116 U.S. 616; *Lees v. United States,* 150 U.S. 476; cf *Plymouth Sedan v. Pennsylvania,* 380 U.S. 693, 701. Certainly, forfeiture of the right to practice a profession is no less a penalty than forfeiture of property. The applicabilty of the privilege to property forfeitures was reaffirmed in *Spevack v. Klein* when the opinion, of Mr. Justice Douglass referred to the "Broad protection given the privilege," in *Boyd v. United States* which it described as a case "where compulsory production of books and papers of the owner of goods sought to be forfeited was held to be compelling him to be a witness against himself" (385 U.S. at 515). Mr. Justice Douglass also noted that the "views expounded in the dissents in *Cohen v. Hurley* (now overruled) need not be elaborated again. Among the views so expounded were those of Mr. Justice Black that the effects of disbarment were so severe as to entitle a lawyer to "the full benefit of the law of the land" (366 U.S. at 147) and those of Mr. Justice Douglas that "Taking away a man's right to practice law is imposing a penalty as severe as a criminal sanction" (366 U.S. at 153-154).

Numerous decisions of the Court hold disbarment or denial of the right to engage in other occupations equivalent to a criminal penalty for the purpose of other constitutional provisions. Disqualification from the practice of law, as well as the pursuit of other vocations, has been regarded as punishment for purposes of the Constitution's bill of attainder and ex post facto prohibitions. *Ex parte Garland*, 4 Wall. 333, 337 (legislative denial of an attorney's right to practice "for past conduct can be regarded in no other light than as punishment for such conduct"); *Cummings v. Missouri*, 4 Wall, 277, 327 (This deprivation of right to pursue regular avocations is punishment); *United States v. Lovett*, 328 U.S. 303, 316 "permanent proscription from any opportunity to serve the Government is punishment"; *United States v. Brown*, 381 U.S. 437 (disqualification from holding Union office held punishment). Since disqualification from the pursuit of one's vocation appears to be no less a criminal punishment for purposes of the privilege against self incrimination, rejection of the claim of privilege by the Court below with respect to disbarment warrants review by this Court.

III

Petitioner also relied upon the ground that his constitutional rights were violated when he was found guilty of having made fraudulent assignments without notice of any such charge or any reference to assignments or improper conduct in relation thereto. Petitioner's motion for recall and reconsideration on the ground that his constitutional rights were violated when he was found guilty of fraud and having made fraudulent assignments without any notice of such

charges was denied by the Appellate Division. The applicability to disciplinary proceedings of the due process notice requirement was established by this Court's decision in *In Re: Ruffalo,* 390 U.S. 544.

In the *Ruffalo* case the Court noted "the charge (No. 13) for which petitioner stands disbarred was not in the original charges made against him" 390 U.S. 549. "Disbarment designed to protect the public, is a punishment or penalty imposed on the lawyer * * *. He is accordingly entitled to procedural due process which includes fair notice of the charge." 390 U.S. 550. The Court observed further that "These are adversary proceedings of a quasi-criminal nature. The charge must be known before the proceedings commence." 390 U.S. 551. The opinion concluded that "This absence of fair notice as to the reach of the grievance procedure and the precise nature of the charges deprived petitioner of procedural due process." 390 U.S. 552.

The referee's finding that petitioner made fraudulent assignments to deceive a client is obviously relevant to his suitability to continue as a member of the bar. It must be assumed, therefore, that the finding had a bearing on the determination that disbarment was an appropriate disciplinary measure. The fact that the finding was not identified as a separate charge does not weaken its effect. Nor does the fact that it was considered in connection with another charge render notice of that charge fair notice with respect to the fraudulent assignments finding.

The charge that petitioner had appropriated his client's share of settlement proceeds, which petitioner

claimed had been loaned to him was wholly independent of petitioner's subsequent assignment to the client of obligations due to him by third parties. The referee's findings with respect to the former were made independently of his findings with respect to the assignment. Similarly, the Appellate Division in confirming the referee's report made a finding with respect to the charge involved independently of any reference to the subsequent assignment.

The findings with respect to subsequent assignments, therefore can only be regarded as a prejudicial finding concerning a separate matter with respect to which petitioner had no notice. As the Court noted in *In Re: Gault,* 387 U.S. 133:

> "Notice, to comply with due process requirements, must be given sufficiently in advance of court proceedings so that reasonable opportunity to prepare will be afforded, and it must set forth the alleged misconduct with particularity."

The Court's decision in *Ruffalo* establishes that this notice requirement is applicable to disciplinary proceedings. Since the referee found that petitioner had made fraudulent assignments, although he had been given no notice of any such charge, the court below should have granted petitioner's motion for reconsideration and other relief requested. Its failure to apply the decision of this court in *Ruffalo* warrants review by this Court.

IV

The Association's attorney had been advised during his investigation that the money from the settle-

ment had been loaned to Kaufman at an interest rate of 10 percent, page 1207 of the record. The referee in his statement charged that Kaufman had blurted out interest at the hearing only to save himself, and that it was a concoction. A subpoena was served requiring the production of the records of the investigation, so that this material which had been suppressed by the prosecution would be produced. Such exculpatory evidence would have established Petitioner's credibility and case. The Appellate Division quashed the subpoena. Such denial deprived petitioner of a Fair Trial and denied him due process. The Court has stated there shall be full observance and enforcement of the cardinal right to a fair trial, which is the overriding responsibility of the Appellate Courts. *People v. Crimmons,* 36 N.Y. 24, 230.

In *Messarosh v. United States,* 350 U.S. 1, Mr. Chief Justice Warren in delivering the opinion of the Court declared at page 9:

> "The dignity of the United States will not permit the conviction of any person on tainted testimony. This conviction is tainted and there can be no other just result than to accord petitioner a new trial."

In *Mooney v. Holohan,* 394 U.S. 103, it was held that a violation of the 14th amendment would occur when perjured testimony was knowingly used by the State Prosecutor and that:

> "Such a contrivance by a State to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of Justice as is the obtaining of a like result by intimidation."

This withholding of evidence by the prosecutor was an invasion of appellant's Constitutional rights of due process. *People v. Riley* 83 N.Y.S. 2d 281; *People v. Steele,* 65 N.Y.S 2d 214. Such suppression of evidence warrants review by this Court.

V

It appears that the Appellate Division designated counsel to investigate petitioner and to determine whether he should be brought up on charges. Counsel demanded that petitioner make statements and turn over his papers and files. Counsel likewise made good his verbal threats when he put it into writing that unless petitioner complied he would be charged and prosecuted. Petitioner complied although not voluntarily. As soon as the Spevack case was decided petitioner registered his objection. The same Appellate Division appointed a Referee to hear these charges that the Appellate Division had obtained through its designated agents. Then when the said Referee of the Appellate Division filed his report with the Appellate Division, they, the same Appellate Division, entertained a motion to confirm the report they had directed and they confirmed such report of petitioner who was the subject of this court initiated investigation. Petitioner later moved to vacate and set aside the conviction and it had to be before the same Appellate Division.

From the foregoing, it logically follows that any statement obtained or papers obtained from petitioner under threat of disbarment were not voluntary, totally lacking in due process, cannot be said to have

been freely made, and constitutes an illegal search and seizure and the evidence should have been suppressed. Due Process requires that every procedure in a matter of law must hold the balance nice, clear and true between the State and the accused and, if it does not, then there is a denial of due process.

Tumey v. Ohio, 273 U.S. 510, 47 S. Ct. 437. This Court has also recognized the Gross Abuse which can result from the one man "judge—grand jury" as exemplified in the case of *In re Murchison,* 349 U.S. 133, 75 S. Ct. 623. In *Murchison,* Justice Black, speaking for the majority stated:

> "It would be very strange if our system of law permitted a judge to act as a grand jury and then try the very person accused as the result of his investigation.
>
> "A single 'judge grand jury' is even more a part of the accusatory process than an ordinary lay grand jury. Having been a part of that process, a judge cannot be, in the very nature of things, wholly disinterested in the conviction or acquittal of those accused. Thus the judge whom due process requires to be impartial in weighing the evidence presented before him, called on his own personal knowledge and impressions of what had occurred in the grand jury room and his judgment was based in part on his impression, the accuracy of which could not be tested by adequate cross examination.
>
> "We hold that it was a violation of due process for the 'judge grand jury' to try these petitioners."

The issues thus raised by this question touche the very roots of the separation of powers in constitu-

tional governments as established in the United States. The action of the Appellate Division is a violation of due process and offends the canons of fairness which we cherish.

It acted through its agents as investigator, prosecutor, judge and court of last resort. Where then can defendants turn for help but to the Supreme Court of the United States.

Such denial of due process warrants review by this Court.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

HAROLD J. McLAUGHLIN
Attorney for Petitioner

ORDER DATED OCTOBER 21, 1982

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the twenty-first day of October, A.D. 1982

Present: Hon. Lawrence H. Cooke, Chief Judge, presiding.

STATE OF NEW YORK
COURT OF APPEALS

Mo. No. 1007

In the Matter of Robert R. Kaufman,

Appellant,

Departmental Disciplinary Committee for the First Judicial Department,

Respondent.

A motion having heretofore been made herein upon the part of the appellant to consolidate his appeals in this Court etc., papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, on the Court's own motion, that the appeals from the Appellate Division orders dated June 24, 1982 and March 16, 1982 be and the same

hereby are dismissed, without costs, upon the ground that the orders appealed from do not finally determine the proceeding within the meaning of the Constitution; and it is

ORDERED, that the said motion to consolidate etc. be and the same hereby is dismissed as academic.

s/Joseph W. Bellacosa
JOSEPH W. BELLACOSA
Clerk of the Court

ORDER DATED JUNE 24, 1982

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on June 24, 1982

Present: Hon. Francis T. Murphy, Jr., Presiding Justice

Theodore R. Kupferman
Joseph P. Sullivan
John Carro
Vincent A. Lupiano, Justices

In the Matter of the application of

ROBERT R. KAUFMAN,

Petitioner.

An order of this Court having been made and entered on February 3, 1966, disbarring the above-named petitioner, Robert R. Kaufman, from practice as an attorney and counselor-at-law in the State of New York,

And said petitioner having moved for reargument of the aforesaid order, and for entry of a final judgment in this proceeding,

Now, upon reading and filing the notice of motion, with proof of due service thereof, and the affidavit of Robert R. Kaufman, sworn to on March 22, 1982, and the exhibit annexed thereto, in support of the motion, and the affidavit of Joseph Rosenberg, sworn to on March 26, 1982, in opposition to the motion, and after hearing Mr. Harold J. McLaughlin for the motion, and Mr. Joseph Rosenberg opposed; and due deliberation having been had thereon,

It is ordered that said motion be and the same hereby is denied.

ENTER:

JOSEPH J. LUCCHI, Clerk

ORDER DATED MARCH 16, 1982

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on March 16, 1982

Present: Hon. Francis T. Murphy, Jr., Presiding Justice

Theodore R. Kupferman
Joseph P. Sullivan
John Carro
Vincent A. Lupiano, Justices

In the Matter of the Application of
ROBERT R. KAUFMAN,

Petitioner,

For Reinstatement to the Bar of the State of New York,

Departmental Disciplinary Committee for the First Judicial Department,

Respondent.

An order of this Court having been made and entered on February 3, 1966, disbarring the above-

named petitioner, Robert R. Kaufman, from practice as an attorney and counselor-at-law in the State of New York,

And said petitioner having moved for an order vacating the order of disbarment,

Now, upon reading and filing the notice of motion, with proof of due service thereof, and the statement of Harold J. McLaughlin dated December 1, 1981, the affidavit of Robert R. Kaufman, sworn to December 1, 1981, and the exhibits annexed thereto, in support of the motion, and the affidavit of Joseph Rosenberg, sworn to February 2, 1982, and the exhibits annexed thereto, in opposition to said motion, and after hearing Mr. Harold J. McLaughlin for the motion, and Mr. Joseph Rosenberg opposed; and due deliberation having been had thereon,

It is ordered that said motion be and the same hereby is denied and respondent's cross-motion to quash the subpoena *duces tecum* granted.

ENTER:

Joseph J. Lucchi, Clerk.

ORDER DATED FEBRUARY 3, 1966

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 3rd day of February, 1966.

Present: Hon. Bernard Botein, Presiding Justice

Hon. Charles D. Breitel,
Hon. Harold A. Stevens,
Hon. Samuel W. Eager,
Hon. Aron Steuer, Justices.

In the Matter of

ROBERT R. KAUFMAN,

An Attorney

The Association of the Bar of the City of New York, by Eric Nightingale, Esq., its attorney, having presented to this Court on the 12th day of June, 1962, a petition containing charges of professional misconduct against the above-named respondent, Robert R. Kaufman, who was admitted to practice as an attorney and counselor-at-law in the State of New York, on the 2nd day of February, 1938, at a term of the Appellate Division of the Supreme Court, Second Judicial Department, and having petitioned the Court to take such action upon such charges as in the judgment of said Court justice may require; and the

respondent having appeared herein by his attorney, Rudolph Stand, Esq., and having interposed an answer to said petition, duly verified the 25th day of June, 1962, and the Court having duly made and entered an order on the 12th day of July, 1962, appointing Theodore R. Kupferman, Esq., as Referee herein to take testimony in regard to said charges and to report to this Court his opinion thereon; and thereafter and on the 17th day of November, 1964, the Association of the Bar of the City of New York, having presented to this Court a supplemental petition containing additional charges of professional misconduct against the above-named respondent and having petitioned the Court to take such action upon such additional charges as in the judgment of said Court justice may require; and the respondent having appeared herein by his attorney, H. Elliot Wales, Esq., and having interposed an answer to said supplemental petition, duly verified the 18th day of November, 1964, and the Court having duly made and entered an order on the 1st day of December, 1964, appointing Theodore R. Kupferman, Esq., as Referee herein to take testimony in regard to said additional charges and to report to this Court his opinion thereon; and thereafter and on the 18th day of February, 1965, an order of this Court having been made and entered relieving theodore R. Kupferman, Esq., as Referee herein, which appointment was contained in the order of this Court entered on July 12, 1962 and December 1, 1964, and appointing Samuel C. Coleman, Esq., as Referee in the place and stead of Theodore R. Kupferman, Esq., and a stipulation having been entered into between the attorneys for the respective parties, dated January 25, 1965, that the record of the pro-

ceedings held to date before Theodore R. Kupferman, Esq., Referee, including the testimony of all witnesses, shall be binding in the same manner as if same had taken place before the new Referee; and the hearing, pursuant to said order of reference having been duly continued before Referee Samuel C. Coleman and the said Referee having duly heard the testimony and proofs tendered by the parties hereto, and having thereafter rendered his report thereon to this Court, which report was dated the 24th day of September, 1965, and was filed in the office of the Clerk of this Court on the 1st day of October, 1965;

And the petitioner thereafter and on the 7th day of December, 1965, having moved for an order confirming the Referee's report and adjudging the respondent guilty of professional misconduct and that the Court take such action herein as it might deem just and proper;

Now, upon reading the petition of The Association of the Bar of the City of New York, verified the 31st day of May, 1962, the affidavit of Eric Nightingale, Esq., annexed thereto, sworn to the 29th day of May, 1962, the notice of presentation of said petition, dated the 31st day of May, 1962, with proof of due service thereof upon the respondent, the answer of the respondent to said petition, verified the 25th day of June, 1962, the order of this Court dated the 12th day of July, 1962, appointing Theodore R. Kupferman, Esq., as Referee herein, all of which papers were duly filed in the office of the Clerk of this Court on the 12th day of July, 1962, the supplemental petition of The Association of the Bar of the City of

New York, verified the 4th day of September, 1964, the affidavit of John G. Bonomi, Esq., annexed thereto, sworn to the 3rd day of September, 1964, the notice of presentation of said supplemental petition, dated the 4th day of September, 1964, with proof of due sevice thereof upon the respondent, the answer of the respondent to said supplemental petition, verified the 18th day of November, 1964, the order of this Court, dated the 1st day of December, 1964, appointing Theodore R. Kupferman, Esq., as Referee herein, all of which papers were duly filed in the office of the Clerk of this Court on the 1st day of December, 1964, the order of this Court entered on February 18, 1965, relieving Theodore R. Kupferman, Esq., as Referee herein, and appointing Samuel C. Coleman, Esq., as Referee in the place and stead of Theodore R. Kupferman, Esq., the stipulation of the attorneys for the respective parties, dated January 25, 1965, the report of Samuel C. Coleman, Esq., the Referee herein, dated the 24th day of September, 1965, together with the testimony taken by him and the exhibits offered in evidence, which were filed in the office of the Clerk of this Court on the 1st day of October, 1965; and upon reading and filing the notice of motion for an order confirming the report of the Referee and adjudging the respondent guilty of professional misconduct, dated the 26th day of October, 1965, with proof of due service thereof, and after hearing Mr. John G. Bonomi for the motion, and Mr. H. Elliot Wales opposed, and due deliberation having been had thereon; and the Court having unanimously found and decided that the respondent has been guilty of professional misconduct in his office of attorney and counselor-at-law, it is hereby unanimously

Ordered that the report of Samuel C. Coleman, Esq., the Referee herein, filed in the office of the Clerk of this Court on the 1st day of October, 1965, be, and the same hereby is, confirmed; and it is further unanimously

ordered that the said Robert R. Kaufman be and he hereby is disbarred from practice as an attorney and counselor-at-law in the State of New York, effective March 3, 1966; and it is further unanimously

Ordered that the name of said Robert R. Kaufman be struck from the roll of attorneys and counselors-at-law in the State of New York effective March 3, 1966; and it is further unanimously

Ordered that the said Robert R. Kaufman be and he hereby is commanded to desist and refrain from the practice of the law in any form, either as principal or agent, clerk or employee of another, effective March 3, 1966; and it is further unanimously

Ordered that the said Robert R. Kaufman be and he hereby is forbidden to appear as an attorney or counselor-at-law before any court, judge, justice, board, commission or other public authority, effective March 3, 1966; and it is further unanimously

Ordered that the said Robert R. Kaufman be and he hereby is forbidden to give to another an opinion as to the law or its application or any advice in relation thereto effective March 3, 1966.

ENTER:

HYMAN W. GAMSO
Clerk

LETTER DATED AUGUST 14, 1964 FROM THE ASSOCIATION OF THE BAR

Personal

Robert Kaufman, Esq.
51 Chambers Street
New York, N.Y. 10007

Dear Mr. Kaufman:

We have received no reply to our letter of July 1, 1964. Unless the requested statement is received on or before September 1, 1964, we will have no alternative but to present formal charges, including a charge of failing to cooperate with the Committee, to the Committee on Grievances.

Very truly yours,

s/Michael Franck
MICHAEL FRANCK

MF:cf

JUDICIAL SUBPOENA DUCES TECUM

APPELLATE DIVISION: SUPREME COURT FIRST DEPARTMENT

In the Matter of ROBERT R. KAUFMAN,

An Attorney

THE PEOPLE OF THE STATE OF NEW YORK

TO JOSEPH ROSENBERG, Attorney for Department Disciplinary Committee, 41 Madison Avenue, New York, New York.

GREETING:

WE COMMAND YOU, that all business and excuses being laid aside, you and each of you appear and attend before the Appellate Division of the Supreme Court, First Department, at the Courthouse, 25th Street and Madison Avenue, New York, New York, on the 12th day of January, 1982 at 1:00 o'clock, in the afternoon, and at any recessed or adjourned date to give testimony in this action on the part of the Petitioner, and that you bring with you, and produce at the time and place aforesaid, a certain all handwritten notes and recordings and reports made by Michael Frank, Esq.; and the attorneys, and the assistant attorneys, and of information, conversations, and Data, and of others made, obtained, from Robert R. Kaufman, and others under petition and charges of July 12,

1962 and supplemental petition of 9/3/64 and December 1, 1964, and charges made thereon, and order made thereon dated February 3, 1966, now in your custody, and all other deeds, evidences and writings, which you have in your custody or power, concerning the premises.

Failure to comply with this subpoena is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed fifty dollars and all damages sustained by reason of your failure to comply.

WITNESS, Honorable Francis T. Murphy, one of the Justices of said Court, at New York, New York, the day of January, 1982.

SO ORDERED

s/Harold J. McLaughlin, Esq.

J.S.C.
Appellate Division
First Department

HAROLD J. McLaughlin, Esq.
Attorney for Petitioner

Office and P.O. Address
32 Court Street
Suite 1700
Brooklyn, N.Y. 11201
(212) 858-8080

DECISION

At a Special Term, Part VII of the Supreme Court of the State of New York, held in and for the County of New York, at 60 Centre Street, in the Borough of Manhattan, City of New York, on May 1969.

Present:

HON. FREDERICK BACKUR, Justice

In re Application of Leo Goldberg, Assignee of part of the claim of Robert R. Kaufman, and Gas Check Corporation for payment of award for fixture damage, Parcel No. 29, on the damage map and in the final decree of the Supreme Court, in Proceeding to acquire title to real property required for Manhattan Civic Center Area, etc., in the Borough of Manhattan, City of New York.

A motion having been made for an order directing the Comptroller of The City of New York to pay to Leo Goldberg the sum of $1,150.00 principal with interest from July 9th, 1965, the award made herein to Gas Check Corporation for fixture damages by reason of the acquisition of title by The City of New York in the above-mentioned proceeding, to the lands and premises known therein as Damage Parcel No. 28 and said motion having duly come on to be heard on May 6, 1969.

NOW, on reading and filing the petition of Leo Goldberg, verified the 3rd day of March, 1969, and the notice of motion, with proof of due service thereof, and on all the papers and proceedings heretofore had herein; and, after hearing Philip Zichello, Esq., attorney for the petitioner, in support of said motion, J. Lee Kankin, Esq., Corporation Counsel of The City of New York, appearing by Harold J. Lynch, Esq., Assistant Corporation Counsel, in opposition thereto, Bernard W. Coblentz, Esq., attorney for the Gas Check Corporation, in opposition thereto, and Robert R. Kaufman, the President of Gas Check Corporation appearing for himself, also in opposition to said motion, and the facts in the matter having been submitted to the Court, and the parties having stipulated in open Court, and due deliberation having been had thereon and upon filing the opinion of the Court, now

On motion of Philip Zichello, Attorney for the petitioner, it is

ORDERED, that the motion be and the same hereby is in all respects granted, and it is further

ORDERED, that the Comptroller of The City of New York withdraw and cancel the warrants totalling $4,969.24 payable to the Gas Check Corporation, now extant and it is further

ORDERED, that the Comptroller of The City of New York on behalf of The City of New York, pay the aforesaid award as follows: first

(a) To The City of New York for payment to date of its prior rent lien of $1,395.00, and second

(b) To Bernard W. Coblentz, Esq., in full payment of his lien of $544.00 for attorney's fees, and

(c) To Leo Goldberg an assignee of Gas Check Corporation the sum of $1,150.00, and lawful interest, and

(d) The balance, if any, to the Gas Check Corporation.

ENTER

J.S.C.
(FREDERICK BACKER)

No. 82-1393

IN THE

Supreme Court of the United States

October Term, 1982

In the Matter of the Petition

of

ROBERT R. KAUFMAN,

Petitioner,

DEPARTMENTAL DISCIPLINARY COMMITTEE FOR THE FIRST JUDICIAL DEPARTMENT,

Respondent.

On Petition for Writ of Certiorari to the Appellate Division, First Department, of the Supreme Court of the State of New York

BRIEF FOR RESPONDENT IN OPPOSITION

MICHAEL A. GENTILE
Chief Counsel
Departmental Disciplinary Committee
Attorney for Respondent
41 Madison Avenue
New York, New York 10010
(212) 685-1000

Of Counsel:
JOSEPH ROSENBERG

Questions Presented

I. Whether an attorney is obliged to answer questions and produce documents relating to an investigation of a complaint of professional misconduct against him.

II. Whether a disciplinary agency may compel an attorney to produce documents and records and respond to allegations of professional misconduct lodged against him.

III. Whether the statements and records so obtained may be used against the attorney in a subsequent disciplinary proceeding.

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No. 82-1393

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BRIEF FOR RESPONDENT IN OPPOSITION

Jurisdiction

The petitioner invokes the jurisdiction of this Court via 28 U.S.C. Section 1257(3).

Statement of the Case

Petitioner was admitted to practice as an attorney and counselor-at-law in the State of New York on February 2, 1938. On June 2, 1962, the Committee on Grievances (predecessor to the respondent) commenced a disciplinary proceeding against petitioner and served a petition charging him with professional misconduct. A supplemental petition charging additional acts of misconduct was filed on November 17, 1964. After a lengthy hearing, the referee appointed by the Appellate Division to hear the charges of misconduct filed his report with that Court on September 24, 1965. On February 3, 1966, the Appellate Division confirmed the report, sustained six of nine charges of misconduct and disbarred petitioner.

One of the charges presented in the disciplinary proceeding was that petitioner had converted the settlement proceeds received on behalf of a client. In his defense of that charge, petitioner contended that his client had loaned him the monies in question and that in consideration for that loan, petitioner issued a partial assignment of the proceeds of an insurance claim. The referee sustained the conversion charge, apparently rejecting petitioner's defense. Neither during this proceeding, nor during any subsequent proceeding, was petitioner charged with taking fraudulent assignments. The finding by the referee that he had made fraudulent assignments was not a predicate for the Appellate Division's findings of professional misconduct.

Petitioner has made numerous applications for leave to appeal, reargument, rehearing, and reinstatement, all

of which have been denied by the Appellate Division. In 1967, petitioner filed a petition in this Court for a writ of certiorari to the Appellate Division of the Supreme Court of the State of New York, First Department. He contended, as he does here, that his constitutional rights had been abridged because he was compelled, under threat of disciplinary action, to produce evidence which was subsequently used against him in the disciplinary proceeding. This Court rejected petitioner's argument and denied the 1967 petition for a writ of certiorari.

In January 1982, petitioner served respondent with a subpoena *duces tecum*, and again moved to vacate the 1966 Appellate Division order disbarring petitioner. On March 16, 1982, the Appellate Division denied the motion and quashed the subpoena. Petitioner's motion for reargument was denied by the Appellate Division on June 24, 1982. And, on October 21, 1982, the New York Court of Appeals dismissed petitioner's appeals from the above orders.

ARGUMENT

I.

A disciplinary agency's request for an attorney's statement and records in response to a complaint of professional misconduct does not constitute an illegal search and seizure nor does the use of this information in a subsequent proceeding violate the Fifth Amendment.

Petitioner's contention that a written communication from the Grievance Committee requiring his cooperation in producing records and other data was coercive and threat-

ening and, as such, constituted an illegal search and seizure lacks merit.

At the outset, it should be noted that disciplinary proceedings based upon charges of professional misconduct are civil in nature, *Matter of Zuckerman*, 20 N.Y. 2d 430, *cert. den.* 390 U.S. 925 (1968). Thus, these proceedings are not subject to the same strict standards which due process demands in a criminal case. Petitioner's attempt to identify disciplinary with criminal proceedings ignores the balance which must be struck between society's interests in the regulation of attorneys and the rights of the individual attorney. The determination of the particular procedural safeguards which due process requires depends upon the nature of the proceeding, the interests of the government and those of the individual. *Goldberg* v. *Kelly*, 397 U.S. 254 (1970).

Petitioner incorrectly argues that *Spevack* v. *Klein*, 385 U.S. 511 (1967), expanded the constitutional privilege against self-incrimination to include the threat of disciplinary action for an attorney's failure to cooperate with an investigation into allegations of professional misconduct. *Spevack* held only that an attorney could not be disbarred for exercising his right to not answer questions which might tend to incriminate him, since he would still be subject to criminal prosecution. *Spevack* is a "compulsion" case and cannot be read to expand the scope of the constitutional guarantee to cover the threat of disciplinary action. Petitioner's reliance on *Garrity* v. *New Jersey*, 385 U.S. 439 (1967), is similarly misplaced. The *Garrity* Court held that prosecutors, in a criminal case against

police officers accused of corruption, could not use incriminating statements obtained under threat of job loss upon refusal to answer for any reason.

Petitioner's argument that inculpatory evidence was obtained from him in violation of the Fifth and Fourteenth Amendments is based upon the erroneous assertion that the above-cited cases broadened the scope of the constitutional guarantee against self-incrimination. An attorney has no right to not answer questions in a disciplinary investigation unless his answers might subject him to *criminal* liability. No such claim is made here.

The Committee on Grievances properly introduced evidence obtained from petitioner during its investigation, and the Appellate Division properly considered this evidence.

II.

The referee's finding relating to the fraudulent assignment issue was not a predicate for the Appellate Division's disbarment of petitioner.

Petitioner was disbarred in 1966, in part, because the Appellate Division found that he converted settlement funds belonging to a client. The referee who heard the charges rejected petitioner's defense that his client had loaned him the money. The referee concluded that respondent's witnesses were not credible and that respondent had made fraudulent assignments to his clients.

Petitioner speciously contends that he was denied due process because his disbarment was predicated on the finding that he had made fraudulent assignments and he had

had no notice that this allegation was part of the charges against him. He speculates that the finding "had a bearing on the determination that disbarment was an appropriate sanction."

It is clear from the record below that petitioner was never charged with making fraudulent assignments and that this conduct was not the predicate for the Appellate Division's disbarment order. *In re Ruffalo*, 390 U.S. 544 (1968), relied upon so heavily by petitioner, does not apply here. Ruffalo's disbarment was predicated upon testimonial admissions to misconduct unrelated to the charge that was the subject of his disciplinary hearing. This Court held that Ruffalo did not have adequate notice of the charges against him.

By contrast, the referee below quite properly limited his references to the assignments in question to their bearing upon his assessment of the credibility of petitioner's witness. The referee did not find that petitioner was guilty of professional misconduct in making fraudulent assignments, nor can it be said that the Appellate Division disbarred petitioner on that ground.

III.

Petitioner's subpoena *duces tecum* was defective on its face.

Petitioner contends that exculpatory material was improperly withheld from him because the Appellate Division quashed a subpoena *duces tecum* served upon respondent. Although the Appellate Division granted respondent's

cross-motion to quash the subpoena without opinion, it is readily apparent from a cursory reading of the Appellate Division's Rules that petitioner's subpoena was defective on its face because it did not bear the endorsement of the Clerk of the Court, as required by Part 603.5 of the court's Rules (22 N.Y.C.R.R. §603.5 (McKinney)).

The Court of Appeals properly declined to review the Appellate Division's order granting the cross-motion.

IV.

Petitioner's challenge to New York's disciplinary scheme is not properly raised in this Court.

It is undenied that attorneys are entitled to due process of law in disciplinary proceedings. *Spevack* v. *Klein*, 385 U.S. 511 (1967). The procedures for disciplinary proceedings established by the New York State Legislature and by the Appellate Divisions of the State of New York have been held to satisfy the requirements of due process. *Mildner* v. *Gulotta*, 405 F. Supp. 182, 211 (E.D.N.Y. 1975).

Petitioner raises *ab initio* the objection that in New York the prosecutor in disciplinary matters is under the supervision of the Appellate Division and, therefore, that there is no separation of the prosecutorial and adjudicative functions. Petitioner did not raise this issue in the state courts, and thus is barred from raising it here.

Furthermore, even if this Court considers the issue, the inherent power of the Appellate Divisions to license, investigate and discipline attorneys admitted to practice in New

York has been repeatedly upheld as constitutional and proper. Petitioner has made no showing that he was in any way harmed or prejudiced by the fact that the Grievance Committee prosecuted him and the Appellate Division disbarred him.

Conclusion

For the reasons stated above, respondent respectfully requests that this Petition for Writ of Certiorari be denied.

Respectfully submitted,

Michael A. Gentile
Chief Counsel
Departmental Disciplinary Committee
Attorney for Respondent
41 Madison Avenue
New York, New York 10010

Of Counsel:
Joseph Rosenberg

No. 82-1393

IN THE

Supreme Court of the United States

October Term, 1982

ROBERT R. KAUFMAN,

Petitioner,

vs.

DEPARTMENTAL DISCIPLINARY COMMITTEE FOR THE FIRST JUDICIAL DEPARTMENT,

Respondent.

On Petition for Writ of Certiorari to the Appellate Division, First Department, of the Supreme Court of the State of New York

Petitioner's Reply to Opposing Brief

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1982
No. 82-1393

ROBERT R. KAUFMAN,
Petitioner,

vs.

DEPARTMENTAL DISCIPLINARY COMMITTEE FOR THE FIRST JUDICIAL DEPARTMENT,
Respondent.

PETITIONER'S REPLY TO OPPOSING BRIEF

PRELIMINARY STATEMENT

Respondents recitals of alleged facts are incorrect. Respondents legal interpretations are incorrect and not applicable.

We just received a copy of Appellate Division Justice's letter to Michael Gentile, Esq. Although dated April 25, 1983 we received it May 5, 1983.

Said letter concedes he was the original Referee in this disbarment case and he signed the Appellate Division orders dated March 16, 1982 and the order dated June 24, 1982 denying Petitioner's application to vacate the orders based on the illegal search and seizure.

I

A conflict of interest here exists and existed. Theodore R. Kufferman was the sitting Referee hear-

ing charges and reading the petitioner's data, papers and written charges submitted to him. Now he signs the orders denying the applications to vacate the taking, by coercion and threats of the data, and records as an illegal search and seizure.

A reading of Judge Kupferman's letter in effect says he doesn't know if it is.

The conflict of interest is a prima facie showing of harm-damage and prejudice and denial of a fair trial. Petitioenr's due process rights have been denied him and his constitutional rights violated.

III

THERE WERE TWO SUBPOENAS SERVED. ONE RETURNABLE JANUARY 12, 1982 (EX. ANNEXED) THE SECOND RETURNABLE JANUARY 15, 1982. (EX. 2 ANNEXED(

The denial by the Appellate Division Clerk to the issuance of the first subpoena was followed by the second as an application to the Judges returnable on the same date as the motion procedure of the Appellate Division so required and respondent's counsel was so informed.

This denial of a Judicial Subpoena Duces Tecum for the production of exculpatory matter, conceded to exist, to be produced for this Appellate Division to see and examine and to aid this Court in its search for the facts to be able to rule on this application below *was a violation of due process and violation of his constitutional rights as recited in our main petition.* (We annex Ex. 3, counsel's consent to the adjournment of such application.)

IV

DENIAL OF CERTIORARI BY THIS COURT HAS NO RES JUDICATA EFFECT AND HAS BEEN *HELD NOT TO* BE A DETERMINATION OF THE MERITS.

Respondent's recital, page 3 of its brief, is incorrect. The Court made no such statement. Annexed hereto is Exhibit four which recites: January 15, 1976

"The petition for a writ of certiorari is denied. Mr. Justice Black and Mr. Justice Douglas are of the opinion that certiorari should be granted.

Very truly yours,

John F. Davis, Clerk

By: C. T. Lyddone

Morton Liftin, Esq.
818 18th St, N.W.
Washington, D.C. 20006

V

IT IS PRECISELY BECAUSE A DENIAL OF A PETITION FOR CERTIORARI, WITHOUT MORE HAS NO SIGNIFICANCE AS A RULING THAT AN EXPLICIT STATEMENT OF THE REASON FOR DENIAL MEANS WHAT IT SAYS.

Parker v. Ellis, 362 U.S. 574, 576

The denial of a writ of certiorari imports no expression on the merits of the case.

U.S. v. Carver, 260 U.S. 482, 490.
Brown v. Allen, 394 U.S. 443.

VI

ON MATTERS OF STANDING TO RAISE FEDERAL CONSTITUTIONAL ISSUES, INCLUDING STANDING TO QUESTION THE FEDERAL CONSTITUTIONAL VALIDITY OF STATE STATUTES, THIS COURT ALONE IS THE FINAL ARBITER, AND IN SO ACTING, THIS COURT OPERATES INDEPENDENTLY OF ANY STATE COURT DETERMINATION AS TO STANDING.

Allied Stores of Ohio v. Bowers, 385 U.S. 522, 525.

Thus, where the sole basis of the state court's refusal to pass upon a federal constitutional claim is the claimant's supposed lack of standing, a matter within this Court's exclusive province, the refusal must be classed as among those denials of federal con-

stitutional claims which will support an appeal to this Court.

It has long been settled that constitutional rights may be denied as much "by the refusal of the state court to decide the question, as by an erroneous decision of it." *Lawrence v. State Tax Commission,* 286 U.S. 276, 282; also *Greene v. Louisville & Interurban R. Co.,* 244 U.S. 599, 508; *Smith v. Cahoon,* 283 U.S. 553, 564.

The particular grounds for such refusal become immaterial, be they lack of standing or some other state procedural defect. Otherwise, state courts could deprive appellants of their right to appeal to this Court by the simple expedient of finding some procedural reason for ignoring or failing to resolve federal constitutional claims properly raised before them.

VII

THE ILLEGAL SEARCH AND SEIZURE WAS CARRIED OUT BY WRITTEN THREATS AND COERCIVE DEMANDS (MAIN PETITION BEFORE THIS COURT)

The Respondent's letter dated August 14, 1964 (Exhibit 13a, Main Petition) has established threats and coercion and illegal taking. The demand for the return of the evidence and suppression of the evidence and papers is conceded. The use of the evidence and refusal of return and failure to suppress is conceded.

The privilege was asserted (Main Petition). The use of the petitioner's papers and records to convict

him of *fraud*, and *conversion of funds, both crimes*, is a matter of record before this Court (Main Petition).

The illegal conduct recited and detailed in the Main Petition is a violation of the Fourth Amendment of the U.S. Constitution, and this Court's holdings in *Garrity v. New Jersey*, 385 U.S. 493 and *Ullman v. United States*, 350 U.S. 422. *In Re: Gault*, 387 U.S. 133; *In Re Ruffalo*, 390 U.S. 544.

It is conceded no *Mirando* warning was issued to petitioner, whichn is a violation of this Court's holding in *Miranda v. Arizona*, 384 U.S. 436.

CONCLUSION

The orders below should be reversed in all respects, the evidence suppressed and the charges dismissed. To perform its high function in the best way "Justice must satisfy the appearance of Justice," *Offutt v. United States*, 348 U.S. 11, 14.

Respectfully submitted,

Harold J. McLaughlin
Attorney for Petitioner

EXHIBIT 1

APPELLATE DIVISION — SUPREME COURT FIRST DEPARTMENT

JUDICIAL SUBPOENA, DUCES TECUM

In the Matter of ROBERT R. KAUFMAN,
An Attorney,

The People of the State of New York

To JOSEPH ROSENBERG, Attorney for Department Disciplinary Committee, 41 Madison Avenue, New York, New York,

GREETING:

WE COMMAND YOU, That all business and excuses being laid aside, you and each of you appear and attend before The Appellate Division of the Supreme Court — First Department, at The Courthouse, 25th Street and Madison Avenue, New York, New York, on the 12th day of January, 1982 at 1:00 o'clock, in the afternoon, and at any recessed or adjourned date to give testimony in this action on the part of the Petitioner, and that you bring with you, and produce at the time and place aforesaid, a certain All handwritten notes and recordings and reports made by Michael Frank, Esq.; and the attorneys, and the assistant attorneys, and of information, conversations, and Data, and of others made, obtained, from Robert R. Kaufman and others under petition and charges of July 12, 1962 and supplemental petition of 9/3/64 and December 1, 1964, and charges made thereon, and order made thereon dated February 3,

1966, now in your custody, and all other deeds, evidences and writings, which you have in your custody or power, concerning the premises.

Failure to comply with this subpoena is punishable as a contempt of Court and shall make y ou liable to the person on whose behalf this subpoena was issued for a penalty not to exceed fifty dollars and all damages sustained by reason of your failure to comply.

WITNESS, Honorable Francis T. Murphy, one of the Justices of said Court, at New York, New York, the day of January, 1982.

[s] Harold J. McLaughlin

SO ORDERED

HAROLD J. McLAUGHLIN

J.S.C. *Attorney for Petitioner*

Appellate Division, First Department

* * * *

EXHIBIT 11

APPELLATE DIVISION — SUPREME COURT FIRST DEPARTMENT

JUDICIAL SUBPOENA, DUCES TECUM

In the Matter of ROBERT R. KAUFMAN, An Attorney,

The People of the State of New York

To JOSEPH ROSENBERG, Attorney for Department Disciplinary Committee, 41 Madison Avenue, New York, New York,

GREETING:

WE COMMAND YOU, That all business and excuses being laid aside, you and each of you appear and attend before The Appellate Division of the Supreme Court — First Department, at The Courthouse, 25th Street and Madison Avenue, New York, New York, on the 15th day of January, 1982 at 1:00 o'clock, in the afternoon, and at any recessed or adjourned date to give testimony in this action on the part of the Petitioner, and that you bring with you, and produce at the time and place aforesaid, a certain All handwritten notes and recordings and reports made by Michael Frank, Esq.; and the attorneys, and the assistant attorneys, and of information, conversations, and Data, and of others made, obtained, from Robert R. Kaufman and others under petition and charges of July 12, 1962 and supplemental petition of 9/3/64 and December 1, 1964, and charges made thereon, and order made thereon dated February 3, 1966, now in your custody, and all other deeds, evidences and writings, which you have in your custody or power, concerning the premises.

Failure to comply with this subpoena is punishable as a contempt of Court and shall make y ou liable to the person on whose behalf this subpoena was issued for a penalty not to exceed fifty dollars and all damages sustained by reason of your failure to comply.

WITNESS, Honorable Francis T. Murphy, one of the Justices of said Court, at New York, New York, the day of January, 1982.

[s] Harold J. McLaughlin

SO ORDERED

HAROLD J. McLAUGHLIN

J.S.C. *Attorney for Petitioner*

Appellate Division, First Department

* * * *

Index No. APPELLATE DIVISION, SUPREME COURT, FIRST DEPARTMENT

~~COURT~~

~~COUNTY OF~~

In the Matter of ROBERT R. KAUFMAN, an Attorney,

~~Plaintiff(s)~~

~~against~~

~~Defendant(s)~~

Judicial Subpoena

DUCES TECUM

HAROLD J. McLAUGHLIN, ESQ.,

Attorney(s) for Petitioner,

Office; Post Office Address; Telephone No.
32 Court Street - Suite 1700
Brooklyn, New York 11201
(212) 858-8080

It is stipulated that the undersigned witness is excused from attending at the time herein provided or at any adjourned date but agrees to remain subject to, and attend upon, the call of the undersigned attorney.

Dated:

.....*Witness*

.....
Attorney(s) for

Sworn to before me on

LICENSE NO.

EXHIBIT 3

McLaughlin, McLaughlin & Neimark
Attorneys at Law
32 Court Street
Brooklyn, New York 11201

Appellate Division of the Supreme Court
First Judicial Department
25th Street and Madison Avenue
New York, New York
Attention: Motion Clerk

RE: ROBERT KAUFMAN
Motion on January 12, 1982

Dear Sir:

This office has agreed with Mr. Joseph Rosen to adjourn the above matter by consent to January 15, 1982.

Thanking you for your anticipated cooperation, I remain

Yours Very Truly,

[s] Harold J. McLaughlin

* * *

EXHIBIT 4

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D.C. 20543

January 15, 1968

Re: KAUFMAN v. ASSN'S OF BAR OF CITY OF new york, No. 795, Oct. Term, 1967

Dear Sir:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied. Mr. Justice Black and Mr. Justice Douglas are of the opinion that certiorari should be granted.

Very truly yours,

JOHN F. DAVIS, Clerk
By: C.T. Lyddone
Assistant

Morton Liftin, Esq.
818 18th St., N.W.
Washington, D.C. 20006